INTERNET USAGE, ON AN END-TO-END BASIS, IS JURISDICTIONALLY INTERSTATE. CONSEQUENTLY, LOCAL RECIPROCAL COMPENSATION FOR ANY INTERNET USAGE IS NOT APPLICABLE.

a) INTERNET CALLS DO NOT TERMINATE AT AN ISP'S LOCATION. INSTEAD, THE ISP IS SIMPLY AN INTERMEDIATE POINT IN AN ISP CALL. INTERNET CALLS ARE A SINGLE END-TO-END COMMUNICATION FROM THE ORIGINATING CUSTOMER TO THE TERMINATING POINT BEYOND THE ISP AND ON OR BEYOND THE INTERNET.

Q. PLEASE DESCRIBE A LEC'S BASIC NETWORK FACILITIES AND HOW THESE FACILITIES ARE USED TO ORIGINATE, TRANSPORT TERMINATE CALLS.

A. A LEC's telecommunications network is comprised of three basic building blocks, which may be described as loop facilities, local switching facilities, and interoffice transport facilities. Loop facilities are the communications paths which connect an end user customer's residential or business location to the telephone company local switching office. Switching facilities are contained in the local switching office, which is the hub of the loop facilities for a geographical area known as a wire center. The local switch connects one customer's loop facility to another loop facility, or to a trunk to another local switch, which completes a communications link. Transport facilities are of two types: a tandem switch which is used to connect local switching offices and interoffice trunking facilities to provide the communications paths between switches.

A customer originates a call using loop and local switching facilities. The call is transported from the originating local switch using trunk and/or tandem switching facilities to an interconnection point (with a Competitive Local Exchange Carrier or to an Interexchange Carrier), or to a ILEC terminating local switch. The call is then completed to the called party. All of LEC's facilities, which are used to originate, transport and/or terminate calls, are within a state. However, the costs of these facilities are not solely intrastate costs. These costs are allocated between the FCC's interstate jurisdiction and the States' intrastate jurisdiction primarily based on a call's originating point and terminating point. This is often called the calls' end-to-

end or station-to-station use. Simply put, if the originating point and the terminating point of the entire continuous call are in different states, then the call, its usage and costs are interstate. If both the originating and terminating points are in the same state, the call, its usage and costs are intrastate. For intrastate calls, usage is local (not intrastate toll or access) if both the originating and terminating points are in the same local calling area.

Q. PLEASE DESCRIBE, IN GENERAL, HOW THE INTERNET WORKS.

A. The Internet is perhaps best understood in comparison to the traditional, common carrier, public switched telephone network. In a circuit-switched network, each call originates in one location and terminates in another, and a single, circuit-switched connection is established between the points of origin and termination for the duration of the call.

The Internet is a packet-switched network environment. As the FCC has explained, the Internet is a:

> "....distributed packet-switched network, which means that information is split up into small chunks or 'packets' that are individually routed through the most efficient path to their destination. Even two-packets from the same message may travel over different physical paths through the network. Packet switching also enables users to invoke multiple Internet services simultaneously, and to access information with no knowledge of the physical location of the server where that information resides.[1]

When an end user places a seven or ten digit call to the Internet through an ISP, the call is carried over the public switched network to the ISP's "node," or point of presence (POP) through which it is connected to the Internet. Once the call is connected to the Internet, the caller effectively becomes part of the Internet; a destination point that any other person connected to the Internet can reach. A call to the Internet that is placed through an ISP can establish a clear, real-time communication between the caller and the

[1] Federal-State Joint Board on Universal Service, Report to Congress, CC Docket No. 96-45, FCC 98-67, Released April 10, 1998, Paragraph 64.

destination point or points he or she is seeking to reach on or beyond the Internet. This communication can take the form of voice (*i.e.*, Internet telephone), audio (such as radio broadcasts), video, fax, and data (including "chat") applications.

Furthermore, the packet-switched nature of the Internet enables an end user to communicate with multiple destinations sequentially, or simultaneously. In a single call, for instance, a caller may access websites that reside on servers located in various states or in foreign countries; communicate directly with another Internet user, by voice, video or electronic messaging; and "chat" online, in real-time, with a group of Internet users located around the corner or around the world.

Q. ARE THERE SPECIFIC PROCEDURES FOR DETERMINING THE JURISDICTION OF A CALL, INCLUDING AN INTERNET CALL?

A. Yes. The jurisdiction of calls and usage (including Internet calls and usage is determined based on the procedures contained in the FCC's Part 36 (*Separations Manual*) Rules and Regulations. These rules are used by both the FCC and State Commissions and provide for a uniform determination of whether calls are interstate or intrastate and thus for a uniform assignment of all usage and costs to either the interstate or intrastate jurisdictions. If calls, usage and costs under these Rules are determined to be interstate, they are under the jurisdiction of the FCC. If the calls, usage and costs under the Rules are intrastate, they are under the jurisdiction of the State Commission.

Q. UNDER THE UNIFORM PART 36 RULES, HOW IS A CALL'S JURISDICTION DETERMINED?

A. Customers may use a LEC telecommunications network for calls and services which are classified as local, intrastate intraLATA toll, and intrastate and interstate access services for Interexchange Carriers (IXCs), ISPs and others connecting to the network. The jurisdiction of a call is established by the station-to-station or end-to-end use of the

telecommunications network facilities used to originate and terminate the call's usage.[2] For jurisdictional purposes, a call or message is not "terminated" until it reaches the intended called party[3] at the distant end of the communications path. Thus, when the originator of a call and the intended called party are located in different states, the call is to be treated as interstate, regardless of the number and location of the intermediate switching central office points, modems, computers or routers and different carriers involved in the transport of a call. Where it is difficult to determine through measurements or reporting, the jurisdiction of the calls using a service (traditionally a special access service), the service is considered to be "contaminated" (a service handling both interstate and intrastate calls) and may be directly assigned to interstate if the station-to-station or end-to-end interstate usage is more than ten percent of the total usage of the service.[4] If the interstate usage is less than ten percent, the usage and costs for the service are assigned to intrastate.

[2] As the FCC stated in Docket 92-18, Memorandum Opinion and Order, Paragraph 12, Released February 14, 1992, footnotes deleted: "Our jurisdiction does not end at the local switch but continues to the ultimate termination of the call. 'The key to jurisdiction is the nature of the communication itself rather than the physical location of the technology.' '[J]urisdiction over, interstate communications does not end at the local switchboard. It continues to the transmissions ultimate destination.' The fact that the facilities and apparatus used to provide BellSouth's voice mail service may be located within a single state, this does not affect our jurisdiction or expand the Georgia PSC's jurisdiction. This Commission has jurisdiction over and regulates charges for, the local network when it is used in conjunction with origination and termination of interstate calls. Similarly, in a Southern Pacific Communications Company Memorandum Opinion and Order, FCC 76-881, Paragraph 6, Released September 28, 1976, the FCC stated: "...the states do not have jurisdiction over interstate communications...". 'The key issue in determining this question before us is the nature of the communications which pass through the facilities, not the physical location of lines.' *United States v. Southwestern Cable Co.*, 392 U.S. 157, 168-9 (1968). As we have often recognized, this Commission's jurisdiction over interstate communications does not end at the local switchboard, it continues to the transmission's ultimate destination.

As these FCC's Orders show, the fact that the Competitive Local Exchange Carrier (CLEC) or ISP equipment is located within a state and a customer is within a state does not make Internet usage local. In fact, the CLEC and ISP simply perform intermediate switching or gateway functions, and the ISP Internet communication is transported by the CLEC and ISP to a distant location on or beyond the Internet for termination.

[3] For ISP Internet calls the intended called party is not the ISP, but a site on or beyond the Internet.

[4] FCC Docket Nos. 78-72 and 80-286, Decision and Order, Released July 20, 1989, Page 1, Paragraph 2.

Q. DO PART 36 PROCEDURES SPECIFY HOW CALLS ARE TO BE DEFINED JURISDICTIONALLY?

A. Yes. In the glossary of Part 36 of the FCC's Rules and Regulations (the Separations Manual), station-to-station or end-to-end is defined as: "The term applied to the basis of toll rate making which contemplates that the message toll service charge...covers the use made of all facilities between the originating station and the terminating station, including the stations, and the services rendered in connection therewith."[5] In other words, usage is to be measured from the originating customer's end or station to the terminating customer's end or station (not at some intermediate point such as the ISP's location) to determine jurisdiction of the call or message. The Manual also defines in the glossary, Message as: "A completed call, i.e., a communication in which a conversation or exchange of information took place between the calling and called parties."

Q. WHAT IS THE BASIS FOR THE CURRENT STATION-TO-STATION OR END-TO-END PROCEDURE CONTAINED IN THE PART 36 RULES?

A. Prior to the Smith v. Illinois Bell Court decision, 282 U.S. 133 (1930), Separations was performed on a "board-to-board" basis. Under board-to-board, customer station equipment, loops and local switches were not jurisdictionally assigned based on usage. In other words, because a LEC'S loop and local switching facilities were all within a state, these costs would not have been allocated based on usage to interstate and intrastate, but would have all been assigned to intrastate. The Smith v. Illinois Bell decision, changed this and required that the interstate and intrastate use of these costs could not be ignored. Consequently, the Separations Manual procedures were developed over time (by Joint Boards) to jurisdictionally assign those costs based on the customer's station-to-station or end-to-end

[5] The Manual is normally not updated to cover all new services and their costs. However, the Manual procedures were designed to be general enough to be applicable to new services. This definition which discusses IXC toll access (interstate and intrastate), as well as intrastate intraLATA toll services for which separate charges are assessed to customers, is also applicable to "toll like" services such as those offered by ISPs, which assess a separate charge to customers and which use ILEC and CLEC networks to access the Internet.

usage. The arguments of CLECs, essentially advocate treating LEC facilities used for ISP Internet access calling on a board-to-board basis, by ignoring the fact that Internet calls using LEC facilities do not end in the LEC's state, but transverse the state's boundary and terminate at nationwide or worldwide locations. They ignore the requirements of Smith v. Illinois Bell and the resulting Part 36 procedures developed by Joint Boards under the Communications Act, which require usage to be classified on a station-to-station or end-to-end basis. Instead, they would have the Commission incorrectly assign to intrastate local, all of a LEC facility costs to access the Internet (which are within a state) and ignore the interstate Internet access use of those facilities. This is incorrect and at odds with Smith v. Illinois Bell, judicial precedents, FCC Orders and Part 36 Rules.

Q. HAS THE FCC CONCLUDED THAT ISP INTERNET CALLS ARE NOT MADE UP OF A REGULATED INTRASTATE LOCAL COMMUNICATION ENDING AT THE ISP AND AN UNREGULATED INFORMATION SERVICE PROVIDED BY THE ISP, BUT INSTEAD ARE A SINGLE END-TO-END COMMUNICATION?

A. Yes, it has. The FCC found that:

> "...the Commission traditionally has determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers."[6]

> "Consistent with these precedents, we conclude that the communications at issue here (Internet calls) do not terminate at the ISP's local server, as some competitive LECs and ISPs contend, but continue to the ultimate destination or destinations, very often at a distant Internet website accessed by the end user. The fact that the facilities and apparatus used for GTE's ADSL service offering may be located within a single state does not affect our jurisdiction. As the Commission stated in *BellSouth Memory Call,* 'this Commission has jurisdiction over, and regulates charges for, the local network when it is used in conjunction with the origination and termination of interstate calls.' Indeed, in the vast

[6] FCC Memorandum Opinion and Order, CC Docket No. 98-79, Released October 30, 1998, Paragraph 17.

majority of cases, the facilities that Incumbent LECs use to provide interstate access are located entirely within one state."[7]

Thus, the FCC found, consistent with how all other calls are jurisdictionalized, that ISP Internet calls do not end or terminate at the ISP but are a single continuous end-to-end communication that is originated by a LEC customer, transported to an ISP who then transports that call to a site on or beyond the Internet for termination. In fact, the FCC further found that those who argued that an Internet call terminates at an ISP because the ISPs provide information or enhanced service, not communications, are wrong:

> "The Commission previously has distinguished between the 'telecommunications services component' and the 'information services component' of end-to-end Internet access for purposes of determining which entities are required to contribute to universal service. Although the Commission concluded that ISPs do not appear to offer 'telecommunications service,' and thus are not 'telecommunications carriers' that must contribute to the Universal Service Fund it has never found that 'telecommunications' ends where 'enhanced' information service begins. To the contrary, in the context of open network architecture (ONA) elements, the Commission stated that 'an otherwise interstate basic service...does not lose its character as such simply because it is being used as a component in the provision of a[n enhanced] service that is not subject to Title II.' Under the definition of information service added by the 1996 Act, an information service, while not a telecommunications service itself, is provided <u>via telecommunications</u>. As explained in the *Universal Service Report to Congress,* because information services are offered via telecommunications, they necessarily require a transmission component in order for users to access information. <u>We, therefore, analyze ISP traffic as a continuous transmission from the end user to a distant Internet site."</u>[8]

[7] *Id.* Paragraph 19, (footnotes deleted, Information in parentheses added for clarity).
[8] *Id.* Paragraph 20, (footnotes deleted, underlining of last sentence added for emphasis). Although the finding was made in the context of an FCC Order dealing with GTE's ADSL service, the last sentence of Paragraph 20 is applicable to all Internet traffic.

The FCC in this Order, also makes it clear that ISPs are not end users for purposes of determining jurisdiction of Internet usage as and ISP calls consequently do not end at the ISP's point of presence (POP).

> "Nor are we persuaded by competitive LEC arguments that, because the Commission has treated ISPs as end users for purposes of the ESP exemption, an Internet call must terminate at the ISP's point of presence... The Commission traditionally has characterized the link from an end user to an ESP as an interstate access service. In the *MTS/WATS Market Structure Order,* for instance, the Commission concluded that ESPs are 'among a variety of users of access service' in that they 'obtain local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its location and, commonly, another location in the exchange areas.' The fact that ESPs are exempt from certain access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs. That the Commission exempted ESPs from access charges indicates its understanding that they in fact use interstate access service; otherwise, the exemption would not be necessary. We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes does not affect the Commission's ability to exercise jurisdiction over such traffic."[9]

Clearly in this Order, consistent with previous jurisdictional precedents and FCC Orders, the FCC found that the jurisdictional of ISP Internet traffic must be based on its end-to-end origination and destination. An Internet call does not terminate an intermediate point in the Internet call, such as the ISP POP (ISP modem, etc.).

b) *INTERNET CALLS ARE JURISDICTIONALLY INTERSTATE, BASED ON PART 36 RULES AND BECAUSE THE FCC HAS ASSERTED JURISDICTION OVER THIS TRAFFIC.*

Q. HOW IS THE JURISDICTION OF THE END-TO-END ISP INTERNET CALLS DETERMINED?

A. Given the nature and current uses of the Internet, it is not possible to identify or separate most of this traffic by jurisdiction because:

[9] *Id.* Paragraph 21 (footnotes deleted, underlining added for emphasis). Again, even though the finding was made in an Order dealing with GTE's ADSL service, these same principles apply all Internet traffic.

1) Like Feature Group A service, the customer does not dial 1+ or 0+, but normally dials only seven or ten digits to reach an ISP. Consequently, the jurisdiction is not readily identifiable or measurable as a result of the number of digits dialed.

2) Numerous interconnected companies including Local Exchange Carriers (LECs), Competitive Local Exchange Carriers (CLECs), IXCs and ISPs may be involved in handling the ISP Internet call which may be terminated anywhere in the United States or the world. Consequently, without significant administrative expense to develop a jurisdiction reporting, auditing and verification procedure for all of the parties handling the calls, or significant investment in measuring equipment by all of the parties, the end-to-end jurisdiction of the call cannot be determined. Even if reporting or measuring is attempted, it may be virtually impossible to measure or to determine appropriate reported jurisdictional usage because of the ability of the Internet to, on a real time basis, deliver calls (interstate, intrastate or international) simultaneously.[10]

For these reasons, determining the jurisdiction of ISP Internet access usage and segregating it between local, intrastate intraLATA toll and interstate and intrastate access may be nearly impossible. Even if the Texas Commission had jurisdiction over ISPs, and could order them to track the jurisdiction of all calls, it would be virtually impossible for ISPs to comply because the end

[10] As the FCC's Office of Plans and Policy ("OPP") explained, in a working paper issued last year: "...because the Internet is a dynamically routed, packet-switched network, only the origination point of an Internet connection can be identified with clarity. Users generally do not open Internet connections to 'call' a discreet recipient, but access various Internet sites during the course of a single connection...One Internet 'call' may connect the user to information both across the street and on the other side of the world." FCC OPP working Paper No. 29 Digital Tornado: The Internet and Telecommunications Policy, March 1997, by Kevin Werbach, Page 45. The OPP working paper also concluded that Internet traffic has "no built-in jurisdictional divisions". See also Report to Congress on Universal Service, (CC Docket No. 96-45, Released April 10, 1998) Paragraph 64 "The Internet is a distributed packet-switched network, which means that information is split up into small chunks or 'packets' that are individually routed through the most efficient path to their destination. Even two packets from the same message may travel over different physical paths through the network. Packet switching also enables users to invoke multiple Internet services simultaneously, and to access information with no knowledge of the physical location of the service where the information resides."

user may "visit" many different sites during a single connection to the Internet.[11] This access usage is interstate because it is jurisdictionally inseverable and, like the special access service dealt with in the FCC's "Contamination" Order, the jurisdiction of ISP Internet access calls cannot practically be measured or reported,[12] but on an end-to-end basis, at least ten percent is interstate.[13]

Q. HAS THE FCC ASSERTED JURISDICTION OVER THIS USAGE AND CONSEQUENTLY DEFINED IT AS INTERSTATE?

A. Yes. In 1983, the FCC required that, in lieu of switched access (access charge exemption), Enhanced Service Providers (ESPs), including ISPs, be allowed to access the Public Switched Network via a business line at state tariffed rates. This assertion of ratemaking authority over Internet usage is

[11] In an Office of Plan and Policy Working Paper No. 30, August 1998, entitled Internet Over Cable: Defining the Future In Terms of the Past, by Barbara Esbin, Page 22, (footnotes deleted), the FCC discusses the major services (points of termination) that an end user can use in one continuous call using the telecommunications access facilities of LECs and the Internet facilities and Information Services made available by the ISP: " 'Once one has access to the Internet, there are a variety of different methods of communication and information exchange over the network, which are themselves constantly evolving.' Although constantly evolving, 'the most common methods of communications on the Internet (as well as the major online services) can be roughly grouped into six categories: (1) one-to-one messaging (such as "e-mail"); (2) one-to-many messaging (such as "listerv"); (3) distributed message databases (such as "USENET newsgroups"); (4) real time communication (such as "Internet Relay Chat"); (5) real time remote computer utilization (such as "telnet"), and (6) remote information retrieval (such as "ftp", "gopher," and the "World Wide Web").' Various types of information, including text, data, computer programs, sound, visual images (*i.e.*, pictures), and moving video images can be transmitted by most of these methods. Each of these six categories involves one of two basic uses of the Internet. 'First, an individual who obtains access to the Internet can correspond or exchange views with one or many other Internet users. Second, a user can locate and retrieve information available on other computers'."

[12] The FCC, in its "Contamination" Order adopting the rule allowing a service to be assigned to interstate when more than ten percent of the usage is interstate, stated: "The Joint Board concluded that proper recognition of state regulatory interest...could be achieved under a direct assignment methodology without the substantial administrative difficulties or undesirable effects on economic efficiency inherent in an allocation-based apportionment method...These measures avoid the disadvantages in terms of administrative complexity, customer confusion, and economic inefficiency inherent in alternative methods." FCC Docket Nos. 78-72 and 80-286, Decision and Order, Released July 20, 1989, Page 1, Paragraphs 4 and 6.

[13] In an analysis by an ISP which operates in SBC's service area, well over 90% of the traffic initiated by the ISP's customers was interstate (originated calls on SBC's network, were transported by SBC to the ISP who then transported the calls to the customer's termination point onto or beyond the Internet). Beyond the fact that the Internet usage is jurisdictionally inseverable and well more than 10% of the Internet use is interstate, Internet usage and costs are interstate because the Internet transmits commercial radio and video service. These services and the costs of facilities used to transport these services are interstate and subject to the FCC's jurisdiction.

an assertion of jurisdiction by the FCC over the traffic. The FCC has indicated that it understood, as a result of the exemption, that it had asserted jurisdiction and that this usage is interstate:

> "That the Commission exempted ESPs from access charges indicates its understanding that they (ISPs) in fact use interstate access service; otherwise the exemption would not be necessary."[14]

In fact, FCC Orders dealing with the ESP and ISP exemption since 1983 have recognized that the exempted Internet usage is interstate. Interstate access charges can only be applied to usage which is jurisdictionally, on an end-to-end or station-to-station basis, assigned to interstate. As the FCC noted in its October 30, 1998 order, if the FCC had found ISP Internet usage to be local, there would have been no need for them to impose an access charge exemption for this usage. The prior FCC Orders dealing with the ESP and ISP exemption are:

Date Released	Docket No.(s)	Title
August 22, 1983	78-72 Phase I	Memorandum Opinion and Order
August 26, 1986	86-1	Second Report and Order
July 17, 1987	87-215	Notice of Proposed Rulemaking
April 27, 1988	87-215	Order
May 9, 1989	89-79	Notice of Proposed Rulemaking
July 11, 1991	89-79 and 87-313	Report and Order, etc.
December 24, 1996	96-262; 94-1; 91-213 and 96-263	Notice of Proposed Rulemaking, etc.
May 16, 1997	96-262; 94-1; 91-213 and 95-72	First Report and Order

Citations from these Orders, which clearly show that the FCC views Internet usage to be interstate, can be found in Attachments 4 and 5 to my Rebuttal Testimony. Attachment 4 contains excerpts from an SBC Ex Parte filed with the

[14] FCC Memorandum Opinion and Order, CC Docket No. 98-79, Released October 30, 1998, Paragraph 21, (footnote deleted, information in parentheses added for clarity).

FCC on May 8, 1998. Attachment 5 contains excerpts from an SBC Ex Parte filed with the FCC on March 24, 1998.

INTERNET CALLS AND USAGE ARE UNDER THE JURISDICTION OF THE FCC

A. THE FCC ASSERTED ITS JURISDICTION OVER ALL INTERNET USAGE AND COSTS TO ACCESS THE INTERNET.

Beginning in 1983, the FCC asserted jurisdictional authority over rates, calls, usage and costs for access to the Internet.

a) The FCC recognized that ESPs (and ISPs) use local exchange facilities (like IXCs and resellers) to complete interstate calls.

b) The FCC recognized that all entities that used the local exchange network should pay for that use on a non-preferential and non-discriminatory basis.

c) The FCC exercised its authority over Internet calls accessing the Internet by granting a transitional exemption from usage based access charges to (1) avoid rate shock and (2) allow usage measurement procedures to be developed to identify Internet usage.

d) Under the FCC exemption, ISPs were treated as end users (only for access rate purposes) and were allowed to obtain network access by purchasing local business lines out of state tariffs.

e) This FCC mandated network access allowed customers to dial seven digits to reach the Internet and initially (as with FGA) traditional jurisdictional measurement procedures assigned this usage to local (because seven digits, not 1+ or 0+, were dialed).

In the March 25, 1998 Ex Parte letter from SBC to the FCC on pages 2 to 8, are brief excerpts from FCC orders dealing with ESP and ISP Internet usage that clearly show that the FCC, over a period of nearly 15 years, viewed this usage to be interstate and under its jurisdiction. The FCC continued to exercise this jurisdictional authority in its First Report and Order, Released May 16, 1997, In the Matter of Access Charge Reform, etc., Docket Nos. 96-262, 94-1, 91-213 and 95-72. In this current Order, the FCC stated:

1. "The term 'enhanced services', which includes access to the Internet ....". 'Enhanced services' are defined in § 64.702(a) of our rules: 'For the purposes of this subpart, the term *enhanced services* shall refer to services, offered over common carrier transmission facilities <u>used in interstate communications</u> . . .' " FN 498. (emphasis added)

2. " . . . usage of interstate information services, and in particular the Internet and other interactive computer networks, has increased significantly." ¶ 341 (emphasis added)

3. "As a result of the decisions the Commission made in the *Access Charge Reconsideration Order*, ISPs may purchase services from incumbent LECs under the same intrastate tariffs available to end users. ISPs may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries. The business line rates are significantly lower than the equivalent interstate access charges, given the ISP's high volumes of usage." ¶ 342

4. "In the NPRM, we initially concluded that ISPs should not be required to pay interstate access charges as currently constituted." ¶ 343

5. "*We therefore concluded that ISPs should remain classified as end* users for purposes of the access charge system." ¶ 348

These comments and others in the 1997 Order clearly show that the FCC, as it has in all of its proceedings from 1983 to the present, continues to assert its jurisdictional authority over rates, usage and costs for access to the Internet.

B. ON AN END-TO-END BASIS, INTERNET CALLS ARE JURISDICTIONALLY INTERSTATE. CONSEQUENTLY, INTERNET ACCESS FACILITIES ARE *JURISDICTIONALLY INTERSTATE.*

The legal and FCC standard for determining the jurisdiction of a call is its end-to-end use. Even if the transmission has identifiable sub-parts or components (circuit or packet switched, voice or information, LEC or ISP, etc.) an end-to-end transmission must always be analyzed as a single event from its initiation to the ultimate destination that a customer expects to reach.

In the glossary of Part 36 of the FCC's Rules and Regulations (the Separations Manual), *station-to-station or end-to-end is defined as: "...The term applied* to the basis of toll ratemaking which contemplates that the message toll service charge...covers the use made of all facilities between the originating station and the terminating station, including the stations and the services rendered in connection therewith." In other words, usage is to be measured from the originating customer's end or station to the terminating customer's end or station (not at some intermediate point such as the ISP's location) to determine the call or message jurisdiction. The Manual also defines "message" in the glossary as:

"A completed call, i.e., a communication in which a conversation or exchange of information took place between the calling and called parties." For Internet calls, the ISP's charge to the customer is analogous to the toll charge discussed in the Manual. The jurisdiction of the network access used by ISP customers is determined by the end-to-end destination that the customer wants to reach. On an end-to-end basis, the vast majority of Internet calls are not local but are interstate or international.

C. USAGE MEASUREMENT PROCEDURES ARE NOW AVAILABLE TO IDENTIFY INTERNET ACCESS USAGE.

In the FCC's Memorandum Opinion and Order in CC Docket No. 78-72, released August 22, 1983, at ¶ 84, the FCC stated regarding the ESP exemption that:

> "The case for a transition to avoid this rate shock is made more compelling by our recognition that it will take time to develop a comprehensive plan for detecting all such usage..."

In the FCC's NPRM in CC Docket No. 89-79, released May 9, 1989, at Footnote 67, regarding the ESP usage measurement issue, the FCC stated:

> "We recognize that jurisdictional measurement of enhanced service traffic may present particular difficulties. ESPs may not always be able to discern the ultimate destination of a call (for example, when traffic is transmitted from one packet network to another) and there may be questions concerning whether a single call can have both interstate and intrastate components (for example, when a computer user during a single session interacts sequentially with a number of data bases in different states). Nevertheless, we think the EES method, perhaps with some reasonable accommodations for special circumstances presented by certain types of enhanced traffic, should be workable for ESPs."

In 1991 in a Report and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking in CC Docket Nos. 89-79 and 87-313, released July 11, 1991, at ¶¶ 67 and 68, the FCC rejected the notion that ESP traffic should be measured as local usage:

> "Florida states its belief that 'the nature of the access should be determined from the point of the call's origination to the point of the ESP's location' ...Most ESPs argue that the EES method is inadequate. They argue that neither ESP customers nor ESPs are able to ascertain accurately which calls are interstate and

> which are intrastate. They complain that the cost of measuring currently unmeasured traffic would be prohibitive ... Decision. The record does not clearly indicate that a new rule is necessary." (Underlining added, Footnotes deleted).

In a NPRM and NOI in CC Docket Nos. 96-262, 94-1, 91-213 and 96-263 released December 24, 1996, at ¶ 315, the FCC was still seeking information on measurement of Internet usage:

> "...we seek comment on jurisdictional, metering and billing questions, given the difficulty of applying jurisdictional divisions or time sensitive rates to packet-switched networks such as the Internet." (Footnotes deleted)

The FCC, in this series of Orders dealing with measurement of Internet usage has clearly indicated that:

1. Lack of usage measurements for Internet traffic is one of the reasons for continuing the access charge exemption.
2. The jurisdiction of Internet usage is not local because it is not determined based on the location of the originator of the call and the location of the ISP or ESP, but based on the end-to-end destination.
3. Entry/Exit Surrogates (EES) may be used to determine the jurisdiction of Internet usage. Under this method, the jurisdiction would be determined from the ISP's point of presence (POP) to the interstate destination of the call.
4. Further comments on other measurement procedures were requested. For some time SBC has been attempting to develop procedures to identify intrastate usage. EES has not been available from ISPs. Consequently, SBC pursued other measurement possibilities.

As previously discussed in January 20, 1998 and February 23, 1998 letters to the FCC, SBC explained that it has developed measurement procedures to *identify Internet usage. These procedures are briefly described in SBC's* response to questions in the February 23, 1998 letter and were more fully described in a February 27, 1998 meeting on this issue with the FCC. The procedure SBC utilized requires that SBC identify the seven-digit ISP Internet access number used by the customer and then match all measured originating ISP Internet usage with that number. A more efficient and straightforward process would be for the CLEC to provide to SBC all Internet access numbers for ISPs connected to it which could then be matched with SBC's measured originating usage to determine Internet usage. SBC is providing to CLECs these numbers for its identification of ISP Internet usage. Unfortunately, CLECs have,

as yet, been unwilling to reciprocate. As Internet usage is identified through SBC's measurement process, it is being removed from local and assigned to interstate.

In the March 25, 1998 Ex Parte letter on page 2 are excerpts from three FCC orders regarding the end-to-end basis for determining the jurisdiction of a call.

In addition to the cases cited in that letter, the following FCC and Court cases make it clear that the end-to-end use by the customer determines the jurisdiction of a call. Jurisdiction is not determined by (a) location of facilities (local exchange facilities within a state), (b) the type of facility (circuit switched or packet) or (c) the nature of regulation of the facilities provider.

a) Smith v. Illinois Bell, 282 U.S. 133,150-51 (1930): Notwithstanding "the practical difficulty of dividing the property between the interstate and intrastate services," one cannot "ignore altogether the actual uses to which the property is put. It is obvious that, unless an apportionment is made, the intrastate service to which the exchange property is allocated will bear an undue burden."

b) *United States v. AT&T*, 57 F. Supp. 451, 454 (S.D.N.Y. 1994), *aff'd sub nom. Hotel Astor v. United States*, 325 U.S. 837 (1945) (per curiam). "That the Communications Act contemplates the regulation of interstate wire communication from its inception to its completion is confirmed by the language of the statue and by judicial decisions."

c) *Southwestern Bell Tel. Co. Transmittal Nos. 1537 and 1560 Revisions to Tariff F.C.C. No. 68, Order Designating Issues for Investigation*, CC Docket 88-180 (released April 22, 1988), 3 FCC Rcd. 2339. The FCC confirmed that a call forming a transmission "loop" that passes between two states is interstate, even if one or more segments of its communications path pass through systems that also could serve purely local traffic. For instance, when long-distance carriers began using 1-800 numbers (for credit-card calls and similar purposes), Southwestern Bell contended that two calls were created by the "second dial tone" heard when the long-distance carrier was reached. The FCC rejected that theory because the entire transaction was required to be treated as one communications event. *Id.* ¶¶ 24 - 28, Citing *NARUC v. FCC*, 746 F.2d 1492 (D.C. Cir. 1984), the FCC held that "[s]witching at the credit card switch is an intermediate step in a single end-to-end communication." *Id.* ¶ 28. "[T]he jurisdictional nature of a call is determined by its ultimate origination and termination, and not ... its intermediate routing." *Id.* ¶ 26. *See also United States v. AT&T*, 57 F. Supp. 451 (S.D.N.Y 1944)

(hotel PBX used to make or receive long-distance calls is not a distinct local exchange service, but rather is part of a single end-to-end communication), *aff'd sub nom. Hotel Astor v. United States*, 325 U.S. 837 (1945) (per curiam). (emphasis added)

d) *In re Long Distance/USA, Inc.* (released Feb. 14, 1995), 10 FCC Rcd. 1634, ¶ 13; *see also In re Teleconnect Co.* (released Feb 14, 1995), 10 FCC Rcd. 1626 ¶ 12 (same principles applied). The FCC explained:

"[B]oth court and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications ... [W]e regulate an interstate wire communication ... from its inception to its completion ... [A] single interstate communication ... does not become two communications because it passes through intermediate switching facilities."

Under this extensive body of precedent, an Internet communication is a single telecommunications event for purposes of jurisdictional analysis, and the location of intermediate facilities cannot transform an interstate event into two jurisdictionally separate components.

That result is not altered in any way by the FCC's Universal Service decision (*Universal Service Order* ¶ 83). That FCC order and the majority of the recent FCC Report to Congress dealt not with whether Internet traffic should be treated as local or interstate, but rather with the wholly unrelated issue of which kinds of services should receive or pay for "Universal Service" support. Nothing in that order or the Report to Congress undermined either the consistent FCC decisions treating Internet communications as interstate or the equally uniform FCC precedent rejecting attempts to bifurcate a single end-to-end communication.

D. THE MIXED USE PRINCIPLE IS APPLICABLE TO INTERNET USAGE

The mixed use of principle, previously applied by the FCC, is applicable to Internet usage, which may be (possibly during a single call) interstate, international or local because:

- Like Feature Group A service, the customer does not dial 1+ or 0+, but normally dials only seven digits to reach an ISP. Consequently, the jurisdiction is not readily identifiable or measurable as a result of the number of digits dialed.

- Numerous interconnected companies including LECs, Competitive Local Exchange Carriers (CLECs), IXCs and ISPs may be involved in handling the

call which may be terminated anywhere in the United States or the world. Consequently, without significant administrative expense to develop a jurisdiction reporting, auditing and verification procedure for all of the parties handling the calls, or significant investment in measuring equipment by all of the parties, the end-to-end jurisdiction of the call cannot be determined. Even if reporting or measuring is attempted, it may be virtually impossible to measure or to determine appropriate reported jurisdictional usage because of the ability of the Internet, on a real time basis, to deliver calls (interstate, intrastate or international) simultaneously.

- Like 800 service calls, numerous calls from anywhere in the United States or the world may be delivered to an Internet bulletin board or a chat line. Consequently, calling can be international, interstate or intrastate.

For these reasons, determining the jurisdiction of ISP Internet usage and segregating it between local, intrastate intraLATA and interstate and intrastate access may be impossible. Even if the Commission were inclined to order ISPs to track the jurisdiction of all calls, it would be virtually impossible for ISPs to comply because the end user may "visit" many different sites during a single connection to the Internet, including more than one site at the same time. Consequently, the usage is interstate because, like the special access service dealt with in the FCC's "contamination" order, (CC Docket Nos. 78-72, 80-286, Released July 20, 1989, Decision and Order), the jurisdiction of ISP Internet calls cannot practically be measured or reported, but on an end-to-end basis, at least ten percent is interstate.

Imperical analysis as well as the few studies that have been done, indicates that well more than 10% of Internet usage is interstate or international. For instance, an analyses performed by SBC indicates that 92 to 99% (depending on the state) of the Internet usage it carries is interstate.

E. RECENT COURT CASES HAVE TREATED INTERNET USAGE AS INTERSTATE

The courts have treated Internet usage as interstate. During the summer of 1996, a three-judge federal panel treated Internet traffic as interstate in nature. The issue in *ACLU v. Reno,* 929 F. Supp. 824 (E.D. Pa. 1996), was whether First Amendment rights for Internet communications were infringed by the Communications Decency Act (the "CDA"; part of the 1996 Act, codified at 47 U.S.C § 223). Because the relevant provision applies only to "interstate or foreign communications" (47 U.S.C. § 223(a)(1)), the statue would be entirely inapplicable to Internet traffic if it were not interstate. While the court struck down portions of the CDA, the pertinent point here is that the court

necessarily understood Internet communications to be interstate. See, 929 F. Supp. at 830-44 (describing the nature, function and uses of the Internet).

This *Reno* decision was consistent with other contemporaneous precedent treating the Internet as inherently interstate. For example, *Malarkey-Taylor Assocs., Inc., v. Cellular Telecomm. Indus. Ass'n, 929* F. Supp. 473 (D.D.C 1996), applied the Lanham Act, which has an "interstate commerce" element, to statements made on an Internet site. In addition, ISPs had been recognized as intermediaries, not the "termination" point of Internet connections. *Religious Tech. Ctr. v. Netcom On-Line Comm. Servs., Inc.,* 907 F. Supp. 1361 (N.D. Cal. 1995), involved Netcom, a "large Internet access provider" (*id.* at 1365) that did "not create or control the content of the information available to its subscriber" (*id.* at 1368). The court noted that although Netcom's computer systems copied and stored information its subscribers sent onto or gathered from the Internet, "Netcom compares itself to a common carrier that merely acts as a passive conduit for information." *Id.* at 1369 & n. 12.

The Supreme Court issued an opinion agreeing with the District Court's ruling in *Reno* and again treated Internet communications as subject to the CDA (and, thus, as jurisdictionally interstate traffic). *Reno v. American Civil Liberties Union,* ____ U.S. ____, 117 S.Ct. 2329 (1997). Describing the Internet as "an international network of interconnected computers" (*id.*, 117 S.Ct. at 2334) that allowed information "stored in different computers all over the world" to be available to a "world-wide audience" (*id* at 2335), the Court analyzed section 223(a) (*id.* at 2338) and partially invalidated it (*id* at 2351). The Court made it clear that the Internet is a world-wide network, not "located in [any] particular geographical location" (*id.* at 2335).

Other federal court decisions are in accord with this understanding. For instance, in *American Libraries Ass'n v. Pataki,* 969 F. Supp. 160 (S.D.N.Y. 1997), the district court struck down a New York State statute that purported to regulate Internet communications. Describing the Internet as "a decentralized, global communications medium" (*id.* at 164), the court rejected the State's argument that its Act was "aimed solely at intrastate conduct" (*id.* at 169). "The New York Act," wrote the court, "cannot effectively be limited to purely intrastate communications over the Internet because no such communications exist. No user could reliably restrict her communications only to New York recipients." *Id.* at 171.

In *Planned Parenthood Federation v. Bucci,* 1997 WL 133313, S.D.N.Y., S.D.N.Y., Mar. 24, 1997, at *3, the court wrote that "Internet users constitute a national, even international, audience, who must use interstate telephone lines to access defendant's web site on the Internet." The court also held that web

sites accessible to Internet users "satisfy the Lanham Act's 'in [interstate] commerce' requirement") (copy in Appendix B, at Tab B-2). *See also United States v. Carroll,* 105 F.3d 740, 742 (1st Cir. 1997) ("Transmission of photographs by means of the Internet is tantamount to moving photographs across state lines and thus constitutes transportation in interstate commerce" for purposes of federal criminal laws), *cert. denied* 117 S.Ct. 2424 (1997); *Bensusan Restaurant Corp. v. King,* 937 F. Supp. 295 (S.D.N.Y 1996) (for *in personam* jurisdiction analysis, a web site located in Missouri is not "local" in New York, and the site's accessibility from there does not create personal jurisdiction).

These decisions establish beyond doubt that the law in existence at the time these agreements were executed -- and indeed the law in existence today -- was that Internet communications constitute interstate and thus not "local traffic."

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DETERMINATION OF INTERNET ACCESS AS INTERSTATE

I. Jurisdiction Over Internet Traffic

II. Internet Traffic Always Considered Interstate Access

III. Internet Service Provider Traffic As Interstate Traffic

I. Jurisdiction Over Internet Traffic

Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, Notice of Proposed Rule Making and Order, 6 FCC Rcd 174 (1990):

"Section 3(a) of the Act gives the Commission jurisdiction over interstate communications 'between the points of origin and reception.'" ~~(n. 101)~~ (emphasis added)
(fn. 101)

Southern Pacific Communications Company Tariff FCC No. 4, Memorandum Opinion and Order. 61 FCC 2d 144 (1976):

"[T]he states do not have jurisdiction over interstate communications.... 'The key issue in determining this question before us is the nature of the communications which pass through the facilities, not the physical location of the lines. *United States v. Southwestern Cable Co., 392 U.S. 157, 168-9 (1968).* As we have often recognized, this Commission's jurisdiction over interstate communications does not end at the local switchboard, it continues to the transmission's ultimate destination. *U.S. v. AT&T, 57 F. Supp. 451 (S.D.N.Y. 1944).*'" (para. 6) (emphasis added)

Petition for Emergency Relief and Declaratory Ruling filed by the BellSouth Corp., Memorandum Opinion and Order, 7 FCC Rcd 1619 (1992):

"Our jurisdiction does not end at the local switch but continues to the ultimate termination of the call. 'The key to jurisdiction is the nature of the communication itself rather than the physical location of the technology.' 'Jurisdiction over interstate communications does not end at the local switchboard, it continues to the transmission's ultimate destination.' .... 'An out-of-state call to BellSouth's voice mail service is a jurisdictionally interstate communication, just as is any other out-of-state call to a person or service." (para. 12) (emphasis added)

II. Internet Traffic Always Considered Interstate Access

Beginning in 1983 with CC Docket No. 78-72 to the present, the Commission has never considered traffic for Internet service, an enhanced service, to be local. On the contrary, enhanced service provider (ESP) calls are considered as interstate access subject to access charges with the only question being when to apply access charges.

MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 682 (1983):

A primary objective of Phase I of CC Docket No. 78-72: "elimination of unreasonable discrimination and undue preferences among rates for interstate services". (para. 3)

ESPs use local exchange facilities to complete interstate calls. "Among the variety of users of access service are ... enhanced service providers.... *In each case the user obtains* local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its location... ... [An] enhanced service provider *might terminate a few calls at its own location and thus would make relatively heavy* interstate use of local exchange services and facilities to access its customers." ~~(para. 78)~~ (para. 79) (emphasis added)

The nature of communication determines jurisdiction. If it is not practical to separate the interstate from intrastate traffic, then traffic is interstate. "Since the nature of the communications determines jurisdiction, Ward v. Northern Ohio Telephone Company 300 F. 2d 816 (6th Cir. 1962), it would be most difficult to show that any switched private line within a state is not jurisdictionally interstate since it is not practical to separate the interstate from the intrastate traffic." ~~(n. 58)~~ (emphasis added)
(fn. 4)

The Commission ordered a transition to avoid rate shock while developing a comprehensive plan to identify usage. Once procedures in are place, access charges could be applied to all users on an equal basis. "Other users who employ exchange service for jurisdictionally interstate communications, including ... enhanced service providers ... would experience severe rate impacts were we immediately to assess carrier access charges upon them. The case for a transition to avoid this rate shock is made more compelling by our recognition that it will take time to develop a comprehensive plan for detecting all such usage and imposing charges in an evenhanded manner." ~~(para. 83)~~ (para. 84) (emphasis added)

WATS-Related and Other Amendments of Part 69 of Commission's Rules, Second Report and Order 1986 FCC LEXIS 2788, 60 Rad. Reg. 2d (P&F) 1542 (1986):

Eliminate the exemption from access charges for resellers and data and telex carriers. Rate shock was no longer sufficient justification for exemption. The "...carriers generally paid the local business line rate for their access lines in lieu of being assessed carrier's carrier charges." "We noted that the rate shock concerns that had initially prompted us to exempt ... carriers from paying access charges no longer provided sufficient justification for the exemption." (para. 2)

ESP exemption was only to give transitional relief. "...[T]elex and data carriers, like carriers...use ordinary subscriber lines and end office facilities through their dial-up connections, and should therefore pay the same charges as those assessed on other interexchange carriers for their use of these local switched access facilities. Our intention in adopting the exemption ... was not to exempt carriers who provide non-MTS/WATS-type services permanently from carrier access charges, but only to grant them some transitional relief." (para. 11)

The rule change did not affect the ESP access charge exemption. The sudden imposition of access could have severe impacts on ESPs; therefore, the need for transition to access charges arose. "We also recognized...the sudden imposition of access charges could have a severe economic impact on these enhanced service providers and that there might be a need for an access charge transition for these entities." (para. 15)

Amendments of Part 69 of the Commission's Rules Relating To Enhanced Service Providers, Notice of Proposed Rule Making, 2 FCC Rcd 4305 (1987):

In 1983 FCC adopted a comprehensive "access charge" plan. Tentatively conclude now appropriate that ESPs like providers of interstate basic services pay access. "At that time, we concluded that immediate application of this plan to certain providers of interstate services might unduly burden their operations and cause disruptions in provision of service to the public. Therefore, we granted temporary exemptions from payment of access charges to certain classes of exchange access users, including enhanced service providers....We tentatively conclude that it is now appropriate that enhanced service providers, like providers of interstate basic services, be assessed access charges for their use of local exchange facilities." (para. 1) (emphasis added)

"In the access charge proceeding, the first of our four primary goals was the 'elimination of unreasonable discrimination and undue preferences among rates for interstate services.' Specifically, our objective has been to distribute the costs of exchange access in a fair and reasonable manner among all users of exchange access service ....We...initially intended to impose interstate access charges on enhanced service providers for their use of local exchange facilities to originate and terminate their interstate offerings. Interstate enhanced services often use common lines and local exchange switches in the same manner as MTS and some MTS equivalent services." (para. 2) (emphasis added)

The access charge exemption was not intended to be permanent. "Because of these concerns about rate shock, we exempted certain exchange access users from the payment of certain interstate access charges in the First Reconsideration. At that time, we did not intend those exemptions to be permanent, and we have since eliminated several of them. For example, in CC Docket No. 86-1, we considered the question of access charge exemption for resellers. In the First Report and Order in that docket, we eliminated the exemption from all access charges for WATS resellers and from traffic-sensitive access charges for MTS resellers. ... We said there that our goal was to promote competition, not to protect competitors." (para. 4) (emphasis added)

"[I]n the First Reconsideration, we granted enhanced service providers an exemption .... As a result, enhanced service providers currently pay local business rates ... for ... switched access connections to local exchange company central offices." (para. 6)

The FCC objective is a set of rules that provide for recovery of costs of exchange access used in interstate service in a fair reasonable and efficient manner regardless of designation as carriers, enhanced service providers, or private customers. The Commission expressed concern that local business rates paid by enhanced service providers do not contribute sufficiently to costs of exchange access facilities they use to offer services to the public. "Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services." (para. 7) (emphasis added)

The FCC restated that "concerns with 'rate shock' cannot sustain an uneconomic pricing structure in perpetuity." (para. 8)

In effort to resolve the difficult issue of measuring ESP usage, FCC asked parties to comment on the method of determining interstate and intrastate usage of enhanced services. Parties were specifically asked to comment on the possibility of using Entry/Exit Surrogate method like that used to estimate jurisdictional usage for Feature Group A and Feature Group B services. (para.11) (emphasis added)

Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order 3 FCC Rcd 2631 (1988):

Even though in 1987 the intention was to remove the ESP exemption, because regulatory and judicial events made it an unusually volatile period for the enhanced service industry, the Commission decided to not eliminate the exemption from interstate access charges for enhanced service providers at that time. " [A]ny discrimination that exists by reason of the exemption remains a reasonable one so long as enhanced services industry remains in the current state of change and uncertainty." (para.1)

Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rule Making, 4 FCC Rcd 3983 (1989):

The Commission analyzed the impact of allowing the existing exemption of enhanced service providers from interstate access charges to remain. The analysis discussed the impact on the jurisdictional allocation of costs to interstate that result from not measuring the use of local exchange facilities for accessing ESP services.

In its analysis, the Commission states that the "...present treatment of the interstate traffic of ESPs appears to be providing significant benefits to ESPs while minimizing disruption of state policies." (para. 33) (emphasis added)

"Maintaining the current exemption arguably places some burden on ordinary interstate ratepayers since ESP customers do not contribute to the interstate share of local exchange NTS costs to the same extent that customers of other interstate services do....[W]hile the

present ESP exemption affects the NTS charges paid by other access customers, it does not seem to have a substantial effect on TS charges. Unlike NTS costs, which are separated between the interstate and intrastate jurisdictions on the basis of a flat-rate allocator, TS costs are separated on the basis of relative usage. ESP traffic over local business lines is classified as local traffic for separations purposes, with the result that TS costs associated with ESP traffic are apportioned to the intrastate jurisdiction, and are recovered through intrastate charges paid by ESPs and other purchasers of intrastate services. Thus, assuming there is an approximate match between interstate TS costs and rates, the present ESP exemption would not seem to have a significant impact on interstate TS access charges." (para. 34) (emphasis added)[1]

"As stated *supra*, para. 34, traffic over 'local' business lines is treated as intrastate for purposes of separating local exchange TS costs. A reclassification of ESP traffic would therefore increase the interstate revenue requirement for TS access elements." (n. 84) (emphasis added)

The Commission's analysis in Paragraph 34, above, also demonstrated the outcome when it becomes difficult to measure the jurisdiction of traffic transported over the local exchange network to a local business line purchased by an ESP. The measurement difficulty is the result of decisions to allow the ESP to use the LEC network to provide a very traffic intensive service at a flat-rate charge and be exempt from access charges. Like Feature Group A traffic, calls that use local exchange facilities to access an enhanced service providers facility appear to be local and, if not identified and jurisdictionally reclassified, this residual traffic will cause additional TS costs to be apportioned to the intrastate jurisdiction for recovery through charges for intrastate services.

In discussing jurisdictional measurements, the Commission stated that for "...FGA and FGB access arrangements, LECs generally lack the technical ability to identify and measure jurisdictional usage. The users of FGA and FGB...generally supply this

[1] A February 4, 1998 letter addressed to Mr. Moran of the FCC from the Association for Local Telecommunications Services (ALTS) incorrectly characterized a sentence in Paragraph 34, above, as the Commission's "long recognized" determination that ESP traffic over local business lines was intrastate local service. ALTS took the sentence out of context, as clearly demonstrated by a more complete reading of the Commission's document. In fact, ALTS' characterization is contrary to prior and subsequent determinations of the Commission. Considering the balance of the FCC document referred to by ALTS shows that the Commission was merely analyzing the impact of the interstate access charge exemption on interstate traffic sensitive access charges, and noting that until measurement procedures were in place, the ESP usage would be incorrectly assigned by separations measurement procedures to local. (see *MTS and WATS Market Structure, Memorandum Opinion and Order; 97 FCC 2d 682 (1983), para. 82*)

information by reporting the percentage of interstate use (PIU) of their traffic.... The *Federal-State Joint Board in CC Docket No. 85-124* recently recommended that the Entry/Exit Surrogate (EES) method be used to determine the originating location of a call for purposes of computing a PIU for FGA and FGB traffic. ESPs that purchase FGA and FGB connections in lieu of local business lines, apparently provide LECs with PIUs." (para. 27)

"Under the EES method of jurisdictional determination, calls that enter an IXC network in the same state as that in which the called station is located are deemed to be intrastate, and calls that terminate in a different state from their IXC point of entry are considered interstate." (n. 65)

The jurisdictional measurement of ESP traffic is difficult. The Commission recognized..."that jurisdictional measurement of enhanced service traffic may present particular difficulties. ESPs may not always be able to discern the ultimate destination of a call (for example, when traffic is transmitted from one packet network to another) and there may be questions concerning whether a single call can have both interstate and intrastate components (for example, when a computer user during a single session interacts sequentially with a number of data bases in different states). Nevertheless, we think the EES method, perhaps with some reasonable accommodations for special circumstances presented by certain types of enhanced traffic, should be workable for ESPs." (n. 67) (emphasis added)

III. Internet Service Provider Traffic As Interstate Traffic

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, as amended, 11 FCC Rcd 21905 (1996):

The Internet is an "interconnected global network of thousands of interoperable packet-switched networks" by which the ISP "connects the end-user to an Internet backbone provider that carries traffic to and from other Internet host sites." (n. 291)

MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 682 (1983):

"Among the variety of users of access service are facilities-based carriers, resellers (who use facilities provided by others), sharers, privately owned systems, enhanced service provides, and other private line and WATS customers, large and small, who 'leak' traffic into the exchange. In each case the user obtains local exchange services or facilities which transit its location and, commonly, another location in the exchange area. At its own location the user connects the local exchange call to another service or facility over which the call is carried out of state... A facilities-based carrier, reseller or enhanced service provider might terminate few calls at its own location and thus would make relatively heavy interstate use of local exchange services and facilities to access its customers." ~~(para. 78)~~ (emphasis added)
(para. 79)

Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers, 11 FCC Rcd. 21354 (1996):

The Commission makes reference to: "interstate information service providers, such as Internet service providers." (para. 19) (emphasis added)

"Usage of interstate information services, and in particular the Internet and other interactive computer network, has increased dramatically in recent years." (para. 282) (emphasis added)

"[A]lthough enhanced service providers (ESPs) may use incumbent LEC facilities to originate and terminate interstate calls, ESPs should not be required to pay interstate access charges." (para. 284) (emphasis added)

While continuing the enhanced services exemption from interstate access charges, the Commission has been concerned about the impact on the PSTN because "...virtually all residential users today connect to the Internet...through incumbent LEC switching facilities designed for circuit-switched voice calls. The end-to-end dedicated channels created by circuit switches are unnecessary and even inefficient when used to connect an end user to an ISP. We seek comment on how our rules can most effectively create incentives for the deployment of services and facilities to allow more efficient transport of data traffic to and from end users." (para. 313)

There has been concern about the ability to measure Internet communications, end-to-end. In 1996, the Commission sought... "comment on jurisdictional, metering, and billing questions, given the difficulty of applying jurisdictional divisions or time-sensitive rates to packet-switched networks such as the Internet." (para. 315)

Digital Tornado: The Internet and Telecommunications Policy, FCC Office of Plans and Policy, OPP Working Paper Series 29 (March 1997):

"[I]t would be difficult to claim that the Internet does not, at some level, involve interstate communications." (page 29) (emphasis added)

CONCLUSION: Access to the Internet is predominately interstate traffic over which the Commission has jurisdiction. Any conclusion that Internet service is understood by the FCC to be "local" is contrary to this Commission's view dating back to 1983. In orders dealing with whether ESPs should pay the same kind of access charges that other interstate carriers pay for using the local carrier's network to originate and terminate calls, the FCC has made it clear that communications involving enhanced services is

interstate in nature, not local. The Commission has methodically proceeded to address the application of access charges, i.e. MTS/WATS, ENFIA, Private Network surcharge, telex data, and resellers of WATS/MTS. The Commission has always recognized that ESPs use local exchange facilities for interstate access. During a transition period, ESPs have been exempted from access charges. The Commission intended no discrimination or undue preference in rates for entities using local exchange facilities for access to enhanced services. The ESPs have been exempted from access charges, not because they were local providers outside FCC's jurisdiction, but rather as a matter of policy to protect new businesses from rate shock during a vulnerable start-up time. The FCC has repeatedly held that the jurisdiction of communications are evaluated on an end-to-end basis. The end-users do not make separate communication to the ISP and then to the ultimate Internet site they seek access. The Internet user is merely using the Internet as a means of transmitting data or voice to a distant site, just as the end-user can use a circuit-switched long distance service to reach a final destination. In both cases, the end-user requires the intermediate service provider (ISP or IXC) to complete the connection to the customer's desired destination. In neither case does the end-user's communication terminate at the intermediate service provider.

The FCC order cited by ALTS is not contrary to the FCC decisions that Internet service is not local. The FCC order dealt not with whether ESP traffic should be treated as local or interstate, but rather with the impact on interstate traffic sensitive access charges caused by the ESP access charge exemption. The FCC has been consistent in decisions treating Internet as interstate and in decisions that the jurisdictional nature of a call is based on its ultimate origination and termination, and not its intermediate routing. It is appropriate that Internet usage be assigned to interstate.

Cost vs. Revenue Analysis for a LEC Providing Service to an End User of an ISP Served by Another LEC

Description of Analysis

When Ameritech's intrastate rates for local telephone service were established, they were based on the costs of a local call, which typically averages about 3.5 minutes in duration. As customers have increasingly changed the use of local phone lines to include access to the Internet on a dial-up basis, the underlying costs have also changed. In particular, the duration of a typical Internet session in Ameritech's exchanges averages about 26 minutes, not 3.5 minutes.

Because the Commission has exempted this interstate access traffic from access charges, Ameritech and other Local Exchange Carriers ("LECs") have been limited to billing this interstate access traffic "as if" it were a local call, at intrastate rates. To determine the impact of this exemption on such Internet-bound traffic, Ameritech undertook a revenue and cost analysis. Although the revenues and costs used in this analysis are unique to Ameritech, the outcome would appear to apply in principle to all LECs.

Ameritech's analysis is simple and conservative. It demonstrates that a Local Exchange Carrier ("LEC") does not receive revenues sufficient to cover its costs when it provides local exchange service to end users who use the service for Internet access. This revenue shortfall occurs even when the end user purchases a "second line" for Internet access, and even when the LEC is not required to make any compensation payment to an interconnected secondary LEC which serves the ISP. It should be noted that this is not a jurisdiction-specific analysis but rather a non-jurisdictional analysis looking at overall costs and revenues. Some of the costs and revenues identified are clearly intrastate (e.g. 75% of the local loop), some are clearly interstate (e.g. 25% of the local loop), and others

Cost vs. Revenue Analysis for a LEC Providing Service to an End User of an ISP Served by Another LEC

are currently subject to varying interpretations (e.g. the use of traffic-sensitive switching and transport facilities).

This analysis is based on an end user obtaining from a LEC a Residential "Second Line" (a Non-Primary Residence line under FCC rules) or additional business line to be used exclusively for Internet access, via an ISP that is served by a different (secondary) LEC. No additional services or features (such as Call Waiting or Caller-ID) are presumed to be purchased by the end user for the network access line, as such services and features have no value on a line used exclusively for Internet access.

In this analysis, it is assumed that the end user places 90 calls per month accessing the Internet, with an average duration of 26 minutes per call, resulting in a total of 39 hours per month online. The average call duration of 26 minutes is consistent with recent studies of Internet access traffic performed by Ameritech's network operations organization. The total online usage of 39 hours per month by an end user is consistent with Ameritech's understanding of current ISP industry standards, such as 15 to 20,000 minutes of use incoming per modem line and an average of eight end users per incoming modem line (39 hours * 8 users = 18,720 minutes per month per line). This number of hours may in fact be conservative for the type of user that would have a second or additional line used solely for Internet access.

This analysis identifies only the costs incurred by the end user's LEC in providing service to the end user over its own network facilities, and does not include as a cost any potential payment of inter-carrier compensation to the secondary LEC serving the ISP.

The costs incurred by the end user's LEC are then compared to the revenues that would be received by that LEC for provision of the service under the applicable state and federal

Cost vs. Revenue Analysis for a LEC Providing Service to an End User of an ISP Served by Another LEC

tariffs in each of the five Ameritech states. Ameritech's tariffs are used as the basis for determining the revenues. Costs and revenues are based on 82% Residence traffic and 18% Business traffic for Internet access, consistent with recent studies of Internet access traffic performed by Ameritech's network operations organization. In every case the revenues received are less than the costs incurred.

Cost of Service

There are two main service cost elements.

(1) The Network Access Line ("NAL"), which includes the local loop connecting the end user's premises to the local central office building and the connection to the switch within that central office. The cost of the NAL is a fixed monthly cost for facilities dedicated to the end user.

(2) The use of network switching and transport facilities starting with the originating switch and continuing over interoffice transport and tandem switching facilities to the point where the calls are handed-off by the end user's LEC to the secondary LEC (at the secondary LEC's switch location which serves the ISP). The cost of the use of these network switching and transport facilities is a variable (traffic-sensitive) cost.

The costs assigned to each of these cost elements are determined by employing the most current costs from state commission proceedings addressing the wholesale cost (i.e., "TELRIC" type costs) of interconnection services and unbundled network elements. In three states (Illinois, Michigan, and Wisconsin) the costs used are commission-approved costs that are reflected in wholesale tariff rates for interconnection and unbundled network elements. In the other two states (Indiana and Ohio), the costs employed are those most recently filed by Ameritech in compliance with commission orders in ongoing dockets, and are generally consistent with the cost levels in the other three states.

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The diagram on page 9 pictorially depicts the following description of how the costs were assembled for this analysis.

The cost for the Network Access Line consists of three parts.

(1) The cost of a basic voice-grade unbundled loop. In the case of states with geographically deaveraged loop costs, a melded cost based on overall residential demand distribution is used. For example, in Illinois, the meld for a Residence Network Access Line is 2% in Area A (the heart of the downtown Chicago business district), 35% in Area B (primarily the remainder of Chicago and certain adjacent suburbs), and 63% in Area C (the remainder of the state, including most of the Chicago suburban area). The meld for a Business line in each state is different than that for a residence line (e.g., the business line meld in Illinois is 11% Area A, 28% Area B, and 61 % Area C), resulting in a different overall cost for a business line.

(2) The cost of a basic voice-grade line-side unbundled local switch port.

(3) The cost of a cross-connection from the loop to the switch port.

The cost for the use of network switching and transport also consists of three parts, though the combining of those three parts is somewhat more complex than it is for the Network Access Line due to the traffic-sensitive nature of the cost. It should be noted that the tandem and transport portions of the cost, though more complex to determine, represent only a very small part of the overall cost.

(1) The first cost element is the cost of end office switching, per minute of use. This cost includes both the use of the switching "matrix" and the use of the trunk port where the interoffice trunking is connected to the end office switch.

(2) The cost of interoffice transport per minute of use from originating LEC switch serving the end user to secondary LEC switch serving the ISP is calculated by

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employing the multi-element interoffice transport costs. For this analysis, the overall cost is based on a mixture of direct trunk and tandem routing, with 50% of the traffic identified as tandem routed, consistent with current inter-carrier traffic flows from Ameritech's end offices. One set of transport terminations and twenty miles of transport facilities mileage are included for the direct trunk route. Two sets of transport terminations (one for each end-office-to-tandem segment) and a total of twenty miles of transport facilities mileage (for both segments together) are included for the tandem route.

(3) The cost of tandem switching per minute of use is the third cost element. This cost includes both the use of the switching "matrix" and the use of the incoming and outgoing trunk ports where the interoffice trunking is connected to the tandem switch. It is applied to only 50% of the traffic, consistent with the application described for interoffice transport above.

In addition to the wholesale costs identified as described above, retailing costs are added to produce the total cost. Retailing costs are determined using the state commission-approved wholesale discount factor for resale service in each state. These factors are designed to identify the net difference between the cost of providing a service on a retail basis as opposed to a wholesale basis. The inverse of the discount percentage applied to retail rates represents the equivalent markup to wholesale rates required to reach the retail rate level. For example, if the wholesale discount is 20% (i.e. $wholesale = 0.8 * retail$), then the markup for retailing costs on top of wholesale costs is 25% (i.e. $retail = wholesale * \frac{1}{0.8}$). Thus, if the wholesale cost determined as described above were $20 per line, and the wholesale resale discount in the state were 20%, the total cost would be *$20*1.25*, or $25 (just as in the reverse case, the application of a 20% discount factor to a $25 retail rate would produce a wholesale rate of $20). In states where two discount factors have been mandated by the state commission (with the application depending on

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whether or not Operator Services and Directory Assistance are provided as part of the resold service), the lower of the two factors has been used in this analysis, resulting in a lower identification of retailing costs. In all states the Network Access Line cost computed in this study is less than four times the applicable federal EUCL charge for a "Non-Primary Residence" or "Multiline Business" line, and the EUCL charge represents less than 25% of the unseparated cost of a Network Access Line due to line termination costs being assigned to the interstate jurisdiction based on a Dial Equipment Minutes factor of less than 25%.

Revenues Received for Service

Revenues received are calculated based on Ameritech's state and federal tariff rates for residential local exchange service in the five states, applied to the same service demand quantities discussed above. In two cases, the rates have been adjusted to reflect subsidy amounts that are included in the tariff rates but for which the revenues are passed on to the subsidy-receiving organization and are not retained by Ameritech, as noted below. Applicable rates (and adjustments) for each state are as follows.

For Illinois, the rates are the monthly residence and business Network Access Line rates (a demand-weighted meld of geographically deaveraged rates, as discussed above in relation to local loop costs), the federal EUCL charge for Non-Primary Residence and Multiline Business lines, intrastate PICC charges, and usage charges for the 90 calls per month. The residence usage rates are per-call rates, with an average computed using the historical residential mix of peak and off-peak messages and the application of volume discounts to the resulting revenues per the tariff. The business usage rates are per-minute rates, with neither off-peak or volume discounts applicable.

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For Indiana, the rates are the monthly residence and business Network Access Line rates (a demand-weighted meld of geographically deaveraged rates, as discussed above in relation to local loop costs), the federal EUCL charge for Non-Primary Residence and Multiline Business lines, and intrastate EUCL and PICC charges. There are no usage charges for either the residential line or the business line, as the Network Access Line rate used in this analysis allows for unlimited monthly calls at no additional charge.

For Michigan, the rates are the monthly residence and business Network Access Line rates (a demand-weighted meld of geographically deaveraged rates, as discussed above in relation to local loop costs), the federal EUCL charge for Non-Primary Residence and Multiline Business lines, intrastate EUCL and PICC charges, and business-only usage charges for the 90 calls per month. The business usage rates are per-call rates, with neither off-peak or volume discounts applicable. There are no usage charges for the residential line, because the 90 calls do not exceed the free call allowance of 400 calls included with the Network Access Line. The residence and business Network Access Line rates were also adjusted to remove a Dual Party Relay Service (TDD to voice) subsidy of $0.23 embedded in those tariff rates which goes to fund the operation of the Dual Party Relay Service.

For Ohio, the rates are the monthly residence and business Network Access Line rates (for business only, a demand-weighted meld of geographically deaveraged rates, as discussed above in relation to local loop costs), the federal EUCL charge for Non-Primary Residence and Multiline Business lines, intrastate PICC charges, and business-only usage charges for the 90 calls per month. The business usage rates are per-call rates, with neither off-peak or volume discounts applicable. There are no usage charges for the residential line, because the Network Access Line rate used in this analysis includes the flat-rate calling package which allows for unlimited monthly calls at no additional charge.

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For Wisconsin, the rates are the monthly residence and business Network Access Line rates, the federal EUCL charge for Non-Primary Residence and Multiline Business lines, intrastate PICC charges, and usage charges for the 90 calls per month. The residence and business usage rates are per-call rates, with neither off-peak or volume discounts applicable for the specified call volume. The residence and business Network Access Line rates were also adjusted to remove a Technology for Educational Achievement ("TEACH") subsidy of $0.74 embedded in those tariff rates which goes to fund the operation of the TEACH program. TEACH is legislatively-mandated program in Wisconsin funded by increases in basic telephone rates that is used to pay for telecommunication improvements on University of Wisconsin System campuses, and for making data lines and video links available to schools and libraries in the state.

Certain other revenues related to local exchange Network Access Lines were identified and were specifically excluded from this analysis because they are targeted to cover specific costs that are outside the bounds of this analysis and are therefore not available to cover the costs identified in this analysis. These revenues exclusions include the following:

Interstate PICC charges are assessed on each Network Access Line, but the revenues from these PICC charges are used to subsidize below-cost (capped at $3.50) interstate EUCL charges for primary residence and single line business lines. Those PICC revenues are therefore not available to cover the costs identified in this analysis.

The recently authorized Number Portability cost recovery charges are assessed on most Network Access Lines, but revenues from those are specifically designed to cover the identified incremental cost of providing number portability which is not included in the cost portion of this analysis.

Custom calling services are often ordered for primary residential exchange lines, but no custom calling features are needed for a line used exclusively for Internet access, and

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second lines in general are typically ordered without such features at a far higher percentage than are primary lines. It would therefore not be appropriate to include any custom calling revenues in this analysis.

Results of the Analysis

The results of the analysis for each of the five states are shown on pages 10-14. In every case the revenues received are less than the costs incurred.

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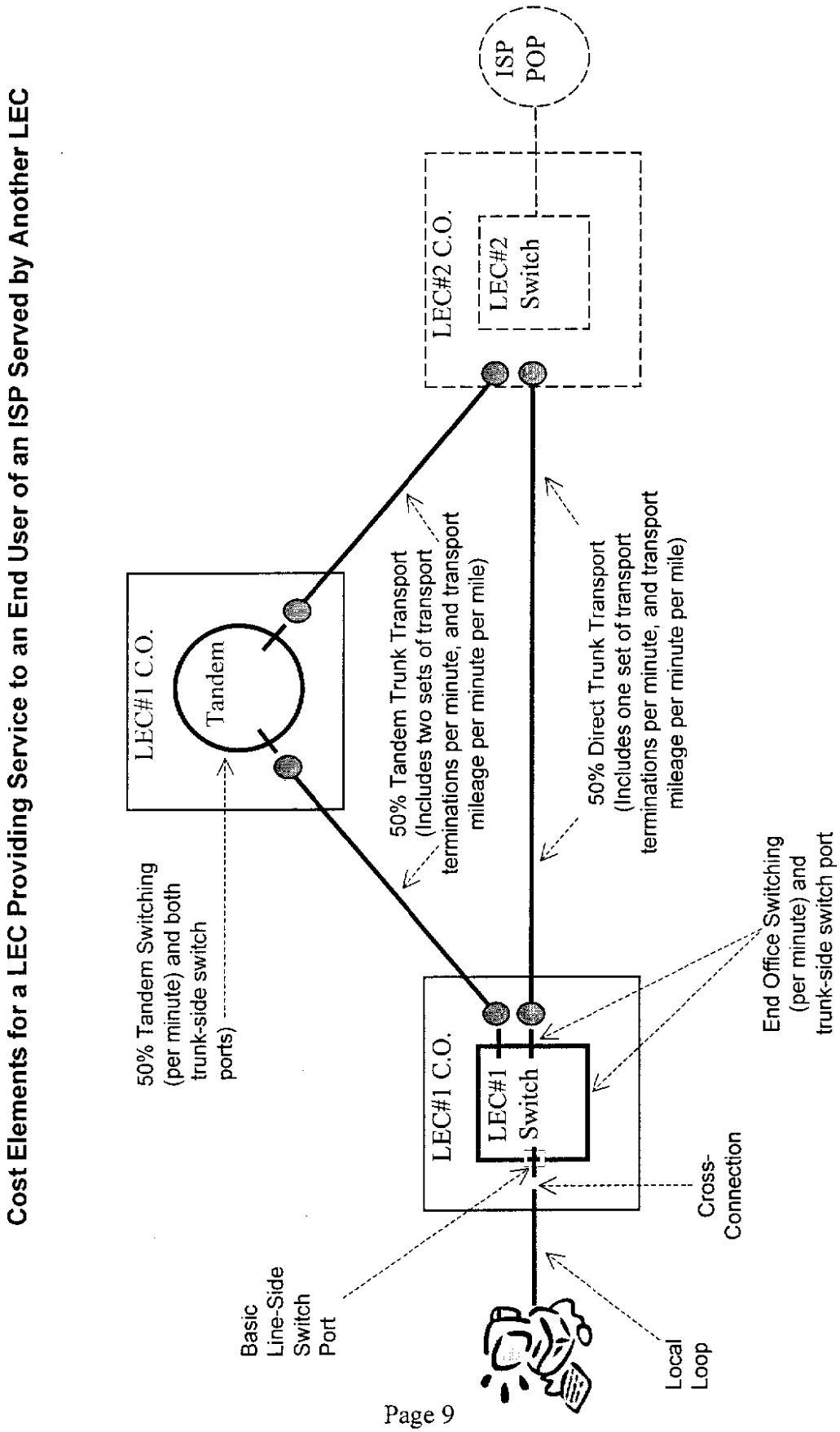

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ILLINOIS

COST INPUT VALUES:

$9.71	Basic Residence Voice Grade Loop Cost
$5.01	Basic Residence Voice Grade Switch Port Cost
$9.21	Basic Business Voice Grade Loop Cost
$5.01	Basic Business Voice Grade Switch Port Cost
$0.14	Basic Voice Grade Cross-Connect Cost
$0.001333	End Office Switching Cost per MOU
$0.000946	Tandem Switching Cost per MOU
$0.000201	Transport Termination Cost per MOU
$0.000013	Transport Minute/Mile Cost per MOU
50%	Percent Calls Tandem Routed
20	Avg Transport miles per call
$0.002367	(computed) Network cost per Minute for LEC Serving End User
19.40%	Wholesale Resale Discount Percentage (Retailing Costs)

REVENUE INPUT VALUES:

$7.66	Monthly Rate for basic Residence Access Line
$5.40	Monthly Rate for Non-Primary Residence EUCL (FCC)
$0.06	Monthly Rate for Non-Primary Residence EUCL and PICC (State)
$10.09	Monthly Rate for basic Business Access Line
$5.40	Monthly Rate for Multiline Business EUCL (FCC)
$0.06	Monthly Rate for Multiline Business EUCL and PICC (State)
$0.0411	Per-Call Rate for Residence Local Call to ISP
$0.4150	Per-Call Rate for Business Local Call to ISP

OTHER INPUT VALUES:

26	Average Minutes per ISP Call
39	Online Hours per Month for End User
90	(computed) Calls per Month for End User
18%	Percentage of ISP Access Traffic Originating from Business End Users

RESULTS:

$18.32	Monthly Fixed Cost Per End User for LEC Serving End User
$6.87	Monthly Usage Cost Per End User for LEC Serving End User
$13.55	Monthly Fixed Revenues Per End User for LEC Serving End User
$9.76	Monthly Usage Revenues Per End User for LEC Serving End User
($4.77)	Monthly Fixed Surplus or (Shortfall) Per End User for LEC Serving End User
$2.89	Monthly Usage Surplus or (Shortfall) Per End User for LEC Serving End User
($1.88)	Monthly Total Surplus or (Shortfall) Per End User for LEC Serving End User

$0.0058	Cost to Originate 3-1/2 Minute Voice Call (Switching Only)
$0.0103	Cost to Originate 3-1/2 Minute Voice Call (Switching plus Transport)
$0.0430	Cost to Originate 26 Minute Internet Call (Switching Only)
$0.0764	Cost to Originate 26 Minute Internet Call (Switching plus Transport)

Cost vs. Revenue Analysis for a LEC Providing Service to an End User of an ISP Served by Another LEC

ILLINOIS

COST INPUT VALUES:

$9.71	Basic Residence Voice Grade Loop Cost
$5.01	Basic Residence Voice Grade Switch Port Cost
$9.21	Basic Business Voice Grade Loop Cost
$5.01	Basic Business Voice Grade Switch Port Cost
$0.14	Basic Voice Grade Cross-Connect Cost
$0.001333	End Office Switching Cost per MOU
$0.000946	Tandem Switching Cost per MOU
$0.000201	Transport Termination Cost per MOU
$0.000013	Transport Minute/Mile Cost per MOU
50%	Percent Calls Tandem Routed
20	Avg Transport miles per call
$0.002367	(computed) Network cost per Minute for LEC Serving End User
19.40%	Wholesale Resale Discount Percentage (Retailing Costs)

REVENUE INPUT VALUES:

$7.66	Monthly Rate for basic Residence Access Line
$5.40	Monthly Rate for Non-Primary Residence EUCL (FCC)
$0.06	Monthly Rate for Non-Primary Residence EUCL and PICC (State)
$10.09	Monthly Rate for basic Business Access Line
$5.40	Monthly Rate for Multiline Business EUCL (FCC)
$0.06	Monthly Rate for Multiline Business EUCL and PICC (State)
$0.0411	Per-Call Rate for Residence Local Call to ISP
$0.4150	Per-Call Rate for Business Local Call to ISP

OTHER INPUT VALUES:

26	Average Minutes per ISP Call
39	Online Hours per Month for End User
90	(computed) Calls per Month for End User
0%	Percentage of ISP Access Traffic Originating from Business End Users

RESULTS:

$18.43	Monthly Fixed Cost Per End User for LEC Serving End User
$6.87	Monthly Usage Cost Per End User for LEC Serving End User
$13.12	Monthly Fixed Revenues Per End User for LEC Serving End User
$3.70	Monthly Usage Revenues Per End User for LEC Serving End User
($5.31)	Monthly Fixed Surplus or (Shortfall) Per End User for LEC Serving End User
($3.17)	Monthly Usage Surplus or (Shortfall) Per End User for LEC Serving End User
($8.48)	Monthly Total Surplus or (Shortfall) Per End User for LEC Serving End User

$0.0058	Cost to Originate 3-1/2 Minute Voice Call (Switching Only)
$0.0103	Cost to Originate 3-1/2 Minute Voice Call (Switching plus Transport)
$0.0430	Cost to Originate 26 Minute Internet Call (Switching Only)
$0.0764	Cost to Originate 26 Minute Internet Call (Switching plus Transport)

State of Illinois)
)
County of Cook)

VERIFICATION

I, Eric L. Panfil, being first duly sworn, do on oath depose and state that I have read the foregoing Verified Statement, am familiar with the contents thereof, and that such contents are true and correct to the best of my knowledge, information and belief.

Eric L. Panfil

Subscribed and Sworn to before
me this 2ND day of June, 2000

Notary Public

OFFICIAL SEAL
LINDA L BEZEC
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. JUNE 24,2003